

IN THE MATTER OF	:	BEFORE THE
VICTOR L. AND BARBARA	:	HOWARD COUNTY
J. REGER	:	BOARD OF APPEALS
Petitioners	:	HEARING EXAMINER
	:	BA Case No. 09-003C

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DECISION AND ORDER

On March 30, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Victor L. and Barbara J. Reger for retroactive conditional use approval to park and store five school buses in an RC-DEO (Rural Residential: Density Exchange Option), filed pursuant to Section 131.N.44 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code.

I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioners were not represented by counsel. Victor L. and Barbara J. Reger, the Property owners, testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find the following facts:

1. The Petitioners are the owners of the subject property, which is located at the terminus of a private road about 980 feet northeast of Monticello Drive. The subject property is

located in the 4th Election District and is also known as 14634 Monticello Drive (the "Property"). The Property is referenced on Tax Map 8, Grid 17, as Parcel 336.

2. The Site. The 2.88-acre, somewhat parallelogram-shaped Property is improved by a one-story, brick and frame single-family dwelling with an attached two-car garage, both of which face the private road frontage. An in-ground pool is situated behind the dwelling. About 85 feet to the dwelling's northeast is a one-story, metal two-bay detached garage. Between this garage and about 25 feet from the dwelling is a gravel surface used for parking five school buses. This gravel parking area becomes a narrow driveway that extends to the north side of the private road cul-de-sac. A narrow line of evergreen trees runs along the east lot line. The remainder of the Property is largely open lawn.

3. Vicinal properties. All adjacent properties are also zoned RC-DEO. To the north, the wooded Parcel 266 appears to be unimproved. Parcel 335 to the east is improved with a one-story, frame, single-family detached dwelling oriented southwest to the cul-de-sac and lying about 145 feet from the detached garage and bus parking area. Across the private road to the south, Parcels 271, 326, and 325 are each improved with a single-family dwelling. The closest dwelling, on Parcel 271, appears to be situated about 150 feet from the Property. A line of mature evergreen trees on Parcel 271 screens the bus parking area from view. To the west, Parcel 337 is improved by a one-story, frame, single family detached dwelling.

4. Roads. Monticello Drive has two travel lanes and a variable paving width within a variable width right-of-way. The posted speed limit is 30 miles per hour. The private road is located on the east side of Monticello Drive, about 125 feet southeast of the MD 97 intersection. The estimated sight distance from the private drive entrance at Monticello Drive is about 900

feet to the south and about 125 feet to the northwest. There is no traffic data for Monticello Drive.

5. Water and Sewer Service. The Property lies within the No Planned Service Area. It is served by private water and sewer facilities. The well is located in the front lawn, adjacent to the driveway, and the septic area is situated northeast of the dwelling.

6. The General Plan. The 2000-2020 General Plan designates the Property as "Rural Residential" on the 2000-2020 Policies Map. The Transportation Map 2000-2020 depicts Monticello Drive as a Local Road.

7. The Petitioner is requesting conditional use approval for a school bus service operation to park and store five school buses on the Property. The buses would leave the Property Mondays through Friday between 6:00 a.m. and 6:45 a.m. in the mornings and return between 9:00 a.m. and 10:00 a.m. In the afternoon, the buses would leave between 1:45 p.m. and 2:00 p.m. and return between 4:00 p.m. and 5:00 p.m. No weekend hours of operation are proposed. The bus operators would arrive and leave in their own vehicles, which would be parked in the dwelling's driveway. According to the Technical Staff Report ("TSR") the buses are backed into the gravel bus parking area. The petition states that only minor repairs to the buses will take place on the Property and that the only materials stored there are fluids and parts necessary for vehicle maintenance. No customers come to the site. The outdoor lighting is typical of a residential property.

8. In response to questioning, the Petitioners agreed to landscape the front section of the bus use to provide additional screening, subject to the condition that it not reduce sight distance.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

1. Harmony with the General Plan. Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and

b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

General Plan Policies. The Howard County General Plan designates the area in which the Property is located as "Rural Residential." School bus parking and storage is presumptively compatible with residential area land use.

The Nature and Intensity of the Use. It is the nature of a school bus service to vary in intensity of use. In the early morning and afternoon hours the bus operators arrive in their own vehicles, warm up the buses, and depart for off-site trips. The intensity of use is minimal between runs, and during overnight storage and weekends. Because privately owned and operated school bus operations are common uses in rural areas, the proposed use is harmonious with the land use and policies indicated in the General Plan for the Rural Residential land use designation.

The size of the site in relation to the use. The operation would be concentrated in the 2.88-acre Property's southeastern corner and the bus operators would park their personal vehicles on the dwelling driveway. According the Conditional Use Plan, the bus operation would meet all use setback requirements. The site is an appropriate size in relation to the use.

The location of the site with respect to streets giving access to the site. Although the site is accessed from a relatively narrow, one-lane private drive, the TSR concludes there is no evidence that the low volume of traffic on the drive would cause vehicle conflicts or traffic problems. Importantly, once off the private road, the buses have almost immediate access to MD 97.

The appropriateness of the conditional use in combination with a permitted use on the site. The proposed conditional use would be combined with a permitted use, a residential dwelling. Additionally, the combination of uses is appropriate, given that all uses meet or exceed setback requirements.

2. Adverse Effect. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (d) access.

When assessing a proposed conditional use under these criteria, we must first recognize that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects in an R-20

district. The proper question is whether those inherent adverse effects are greater at the proposed site than they would be generally elsewhere within the RC district. *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, I conclude the Petitioners have met their burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a school bus service operation in an RC district.

a. Physical Conditions. Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The Petitioners propose to use their Property to park and store five school buses and for vehicle circulation in an area that is reasonably separated from vicinal dwellings. According to the TSR, the small gravel parking area and short driveway are unlikely to cause noise or dust. Nor is the paved private road expected to create inordinate noise or dust. If the buses are backed into the site (i.e., they are parked facing south), the required back-up beeping should be minimal. There is no evidence that the use will cause fumes, odors, glare, vibrations, or hazards. I therefore conclude these inherent operational adverse effects will be not greater at the subject site than elsewhere in the zone or applicable other zones.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The detached garage and landscaping bus parking, storage and circulation area screen the use from the eastern adjoining property. Landscaping along the southern properties across the private road screens the dwellings on this side from the use. In addition, the Petitioners agreed to landscape the area along the cul-de-sac in front of the use if required as a condition of approval. I therefore conclude the location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The parking areas are adequate to support the use and the bus parking, storage, and circulation driveway is accessed from the private road cul-de-sac, which minimizes the use's impact on adjacent properties. No loading or refuse areas are proposed. The existing screening and any additional screening required as a condition of approval will also minimize the use's adverse impacts. The parking area and driveway are not visible from a public road.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The bus driveway and the dwelling driveway used as the designated parking area for the bus operator's personal vehicles appear to provide safe access, with adequate sight distance.

III. Specific Criteria for School Buses (Parking and Storage) (Section 131.N.44)

A conditional use may be granted in the RC, RR, R-20 or R-12 Districts for the parking and storage of more school buses than allowed by these regulations, provided that:

a. All such vehicles parked or stored outside of a structure shall be screened from adjoining properties.

As discussed above, the buses will be screened from adjoining properties, subject to any conditions of approval, in accordance with Section 131.N.44.a.

b. No such vehicles shall be parked or stored within the structure setback requirements of the district in which they are located.

According to the Conditional Use Plan, all vehicles will be parked or stored outside the structure setbacks, which are 50 feet from the front, 10 feet from the sides, and 30 feet from the rear, in accordance with Section 131.N.44.b.

c. Any parking spaces occupied by such vehicles shall be provided in addition to all other required parking spaces.

The gravel parking area and the area used by the bus operators for personal parking is provided in addition to the required residential parking. The Petitioners will continue to use the two-car garage attached to the dwelling as their personal parking area. The petition accords with Section 131.N.44.c.

d. Only minor repairs to such vehicles shall be permitted. In no case shall body work, engine rebuilding, engine reconditioning or collision services be permitted.

The petition states that only minor repairs to the buses will be performed on site, in accordance with Section 131.N.44.b.

e. The storage or parking of the number of vehicles registered as school buses on lots or parcels in the RC, RR, R-20 and R-12 Districts on the effective date

of this amendment (Zoning Board Case 715, effective July 25, 1978) shall be deemed valid nonconforming uses in those districts.

This section does not apply, is the proposed use is not a valid nonconforming use.

ORDER

Based upon the foregoing, it is this 6th day of April 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Victor L. and Barbara J. Reger for a School Bus (Parking and Storage) conditional use for five buses in an RC-DEO district is **GRANTED;**

Provided, however, that:

1. The Petitioners shall install a Type A landscape buffer along the Property frontage such that it shall not reduce sight distance.
2. The Petitioners shall consult with the Department of Planning and Zoning as to any permit or site development plan requirements.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

MICHELE L LEFAIVRE
Michele L. LeFaivre

Date Mailed: 4/7/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.